

HOUSE BILL No. 1360

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-28-1-1; IC 8-1-13.1.

Synopsis: Alternative energy incentives for REMCs. Establishes the office of alternative energy incentives (office) to administer a program to provide incentives for rural electric membership corporations (corporations) and their cooperatively owned power suppliers to develop alternative energy projects. Requires the secretary of commerce to appoint an individual to serve as the office's director. Establishes the alternative energy incentive fund to provide funds to corporations for use in developing alternative energy projects. Requires the office to administer the fund and to establish an account within the fund for each corporation. Provides that not later than June 1 of each year, beginning in 2009, the treasurer of state shall deposit into the fund an amount equal to 20% of the total utility receipts taxes remitted to the state by corporations during the preceding calendar year. Provides that not later than July 1 of each year, beginning in 2009, the office shall: (1) allocate from the money deposited in the fund for the year; and (2) deposit into a corporation's account; a part of the total money deposited in the fund, based on the corporation's proportionate share of the total utility receipts taxes remitted by all corporations during the preceding calendar year. Sets limits on: (1) the maximum amount that may be credited to a corporation's account each year; and (2) the maximum balance that may accumulate in a corporation's account at any given time during a calendar year. Provides that not later than August 1 of each year, beginning in 2009, a corporation may apply to the office to have access to a certain percentage of the total funds in the corporation's account as of July 1 of the year, based on the percentage of the corporation's total sales from the provision of retail

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Effective: Upon passage.

Battles, Wolkins, Pelath

January 13, 2009, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.



energy service during the preceding calendar year that was attributable to alternative energy projects. Allows two or more corporations that are members of the same cooperatively owned power supplier to develop alternative energy projects jointly. Sets forth limitations on how money drawn from a corporation's account may be used. Gives the office authority to adopt rules to implement the program. Makes an appropriation.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1360

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-28-1-1, AS ADDED BY P.L.4-2005, SECTION
2 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]: Sec. 1. (a) It is the intent of the general assembly to
4 improve the quality of life for the citizens of Indiana by encouraging
5 the:
6 (1) diversification of Indiana's economy and the orderly economic
7 development and growth of Indiana;
8 (2) creation of new jobs;
9 (3) retention of existing jobs;
10 (4) growth and modernization of existing industry; and
11 (5) promotion of Indiana.
12 (b) The general assembly finds the following:
13 (1) Certain activities associated with the functions listed in
14 subsection (a) may not work properly with the traditional
15 responsibilities and activities of state agencies.



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(2) The functions listed in subsection (a) can be achieved most efficiently by a body politic and corporate that:

(A) serves the interests of the state by carrying out the programs set forth in this article;

(B) is free from certain administrative restrictions that would hinder its performance; and

(C) possesses broad powers designed to maximize the state's economic development efforts.

(3) The corporation established by this article will:

(A) lead the state's economic development efforts;

(B) carry out the programs under this article, including the providing of grants and loans; ~~and~~

(C) administer the:

(i) office of alternative energy incentives established by IC 8-1-13.1-10; and

(ii) alternative energy incentive fund established by IC 8-1-13.1-11;

in accordance with IC 8-1-13.1; and

~~(D)~~ **(D)** perform other essential public services for the state.

(4) In return for the corporation's economic development efforts to carry out the functions listed in subsection (a), the general assembly should appropriate state funds to the corporation.

SECTION 2. IC 8-1-13.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 13.1. Alternative Energy Projects by Rural Electric Membership Corporations

Sec. 1. The general assembly makes the following findings:

(1) Alternative energy projects result in quantifiable reductions in, or the avoidance of, regulated air pollutants and carbon emissions produced by traditional electric generating facilities that use fossil fuels as their fuel source.

(2) Corporations and cooperatively owned power suppliers should plan and implement alternative energy projects on behalf of and at the request of their members.

(3) Incentives that encourage corporations and their cooperatively owned power suppliers to:

(A) develop alternative energy projects; and

(B) apply for, and contribute matching funds to, state or federal grants and programs for alternative energy projects;

are in the public interest of the state and its citizens and are

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crucial to the state's economic development efforts.

Sec. 2. As used in this chapter, "alternative energy project" means a project that:

(1) develops or makes use of:

(A) clean coal and energy projects (as defined in IC 8-1-8.8-2);

(B) renewable energy resources (as defined in IC 8-1-8.8-10) for the production of electricity;

(C) integrated gasification combined cycle technology to produce synthesis gas that is used:

(i) to generate electricity; or

(ii) as a substitute for natural gas;

regardless of the fuel source used to produce the synthesis gas;

(D) methane recovered from landfills for the production of electricity;

(E) nuclear power for the production of electricity; or

(F) demand side management, energy efficiency, or conservation programs;

(2) results in quantifiable reductions in, or the avoidance of:

(A) the use of electricity produced by traditional electric generating facilities that use fossil fuels as their fuel source; or

(B) regulated air pollutants and carbon emissions produced by traditional electric generating facilities that use fossil fuels as their fuel source; and

(3) is implemented under a plan approved by:

(A) the office; and

(B) a corporation's or a cooperatively owned power supplier's board of directors.

Sec. 3. As used in this chapter, "cooperatively owned power supplier" means an energy utility (as defined in IC 8-1-2.5-2) that is organized under IC 23-17 and whose membership includes one (1) or more corporations organized under IC 8-1-13.

Sec. 4. As used in this chapter, "corporation" means a corporation organized under IC 8-1-13 as a local district corporation (as defined in IC 8-1-13-23(b)).

Sec. 5. As used in this chapter, "director" refers to the director of the office of alternative energy incentives appointed under section 10(b) of this chapter.

Sec. 6. As used in this chapter, "fund" refers to the alternative

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energy incentive fund established by section 11 of this chapter.

Sec. 7. As used in this chapter, "office" refers to the office of alternative energy incentives established by section 10 of this chapter.

Sec. 8. As used in this chapter, "retail energy service" has the meaning set forth in IC 8-1-2.5-3.

Sec. 9. As used in this chapter, "secretary" refers to the secretary of commerce appointed under IC 5-28-3-4.

Sec. 10. (a) The office of alternative energy incentives is established.

(b) The secretary shall appoint an individual who is qualified by knowledge of or experience in the electric utility industry to serve as the director of the office.

(c) The director:

(1) serves at the pleasure of and is responsible to the secretary;

(2) may receive compensation in an amount determined by the secretary, subject to the approval of the budget agency;

(3) serves as the chief executive and administrative officer of the office; and

(4) may, to the extent appropriate, delegate the director's authority under this chapter, subject to the approval of the secretary and the budget agency.

(d) The secretary may:

(1) establish; and

(2) appoint members to;

an advisory board to advise the office in the administration of this chapter.

Sec. 11. (a) The alternative energy incentive fund is established for the purpose of providing funds to corporations for use in the development of alternative energy projects. The fund shall be administered by the office.

(b) The fund consists of:

(1) money received under section 12 of this chapter;

(2) money appropriated to the fund by the general assembly;

(3) money received from state or federal grants or programs for alternative energy projects; and

(4) donations, gifts, and money received from any other source, including transfers from other funds or accounts.

(c) Money in the fund is continuously appropriated for the purposes of this section.

(d) Money in the fund may be spent only in accordance with this

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chapter and to carry out the purposes of this chapter.

(e) The expenses of administering the fund shall be paid from money in the fund.

(f) Notwithstanding IC 5-13, the treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as money is invested by the public employees retirement fund under IC 5-10.3-5. The treasurer of state may contract with investment management professionals, investment advisers, and legal counsel to assist in the investment of the fund and may pay the expenses incurred under those contracts from the fund. Interest that accrues from these investments shall be deposited in the fund.

(g) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 12. (a) The office shall establish an account within the fund for each corporation.

(b) Beginning in 2009, not later than June 1 of each year, the treasurer of state shall deposit into the fund twenty percent (20%) of the amount of utility receipts taxes remitted by corporations under IC 6-2.3 during the preceding calendar year.

(c) Beginning in 2009 and subject to section 13 of this chapter, not later than July 1 of each year, the office shall allocate from the money deposited in the fund under subsection (b) for the year and deposit into a corporation's account an amount equal to:

(1) the amount deposited in the fund under subsection (b) for the year; multiplied by

(2) a fraction, the numerator of which equals the amount of utility receipts taxes remitted by the corporation under IC 6-2.3 during the preceding calendar year, and the denominator of which equals the amount of utility receipts taxes remitted by all corporations under IC 6-2.3 during the preceding calendar year.

(d) Subject to section 13(b) of this chapter, money in the fund that is:

(1) not deposited in the fund under subsection (b); and

(2) deposited by or on behalf of a designated corporation;

shall be credited to the account of the designated corporation.

Sec. 13. (a) The maximum amount credited each year under section 12(c) of this chapter to a corporation's account may not exceed an amount equal to twenty percent (20%) of the amount of utility receipts taxes remitted by the corporation under IC 6-2.3 during the preceding calendar year.

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(b) The maximum balance that may accumulate in a corporation's account at any time during a particular calendar year shall not exceed an amount equal to five (5) times the amount of utility receipts taxes remitted by the corporation under IC 6-2.3 during the preceding calendar year.

Sec. 14. (a) Beginning in 2009, not later than August 1 of each year, a corporation may apply to the office to have access to a percentage of the total funds in the corporation's account as of July 1 of the year, as follows:

(1) A corporation may have access to not more than forty percent (40%) of the total funds in the corporation's account if the corporation certifies to the office that alternative energy projects accounted for five percent (5%) or less of the corporation's total sales from the provision of retail energy service during the preceding calendar year.

(2) A corporation may have access to not more than seventy percent (70%) of the total funds in the corporation's account if the corporation certifies to the office that alternative energy projects accounted for:

(A) more than five percent (5%); and

(B) not more than ten percent (10%);

of the corporation's total sales from the provision of retail energy service during the preceding calendar year.

(3) A corporation may have access to one hundred percent (100%) of the total funds in the corporation's account if the corporation certifies to the office that:

(A) alternative energy projects accounted for at least ten percent (10%) of the corporation's total sales from the provision of retail energy service during the preceding calendar year;

(B) at least fifty percent (50%) of the sales attributed to alternative energy projects under clause (A) were made to Indiana customers; and

(C) at least fifty percent (50%) of the alternative energy projects that:

(i) under clause (A) accounted for at least ten percent (10%) of the corporation's total sales from the provision of retail energy service during the preceding calendar year; and

(ii) are energy production or generating facilities; are located in Indiana.

(b) A corporation that seeks access to a percentage of the total

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funds in the corporation's account under subsection (a) shall submit:

- (1) an application to the office on a form prescribed by the office; and
- (2) any documentation required by the office to support the corporation's certification of the percentage of its total sales from the provision of retail energy service attributable to alternative energy projects during the preceding calendar year.

An application submitted under this section must be signed under penalty of perjury by an officer of the corporation or another person authorized to bind the corporation.

(c) The application form prescribed by the office and described in subsection (b)(1) must require the applicant to identify:

- (1) each planned or existing alternative energy project in which the applicant plans to invest money drawn from the applicant's account under this section;
- (2) the amount of money the applicant plans to invest in each alternative energy project identified under subdivision (1); and
- (3) any other corporations, cooperatively owned power suppliers, or other persons that have or will invest money in each alternative energy project identified under subdivision (1), to the extent known by the applicant.

(d) Upon receiving an application and any supporting documents from a corporation under subsection (b), the office shall review the application and documents for accuracy and completeness. If the office determines that the application and documents are accurate, complete, and properly verified, the office shall notify the corporation as soon as practicable, but in any case not later than thirty (30) days after the date of the corporation's application, that the corporation may have access to the percentage of funds for which the corporation qualifies under subsection (a). If the office determines that the application and documents are inaccurate or incomplete, or are not properly verified, the office shall immediately notify the corporation of any additional information or verifications required. If there is disagreement between a corporation and the office about:

- (1) the accuracy or completeness of an application or any documents submitted in conjunction with an application; or
- (2) the determination of, or the method used to determine, the percentage of a corporation's total sales from the provision of

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1 retail energy service that is attributable to alternative energy
 2 projects;
 3 the corporation may request a hearing or any other procedure for
 4 resolving disputes established by the office in rules adopted under
 5 section 17 of this chapter.

6 (e) A corporation may receive the percentage of funds for which
 7 it qualifies under subsection (a) for a particular year in one (1) or
 8 more installments. However, any money received by a corporation
 9 under this section may be used only for one (1) or more alternative
 10 energy projects in accordance with section 16 of this chapter.

11 Sec. 15. (a) Two (2) or more corporations that are members of
 12 the same cooperatively owned power supplier may:

- 13 (1) develop alternative energy projects jointly; and
- 14 (2) share money drawn from their respective accounts in the
 15 fund with the corporations' cooperatively owned power
 16 supplier, as long as the cooperatively owned power supplier
 17 uses the money for one (1) or more alternative energy projects
 18 in accordance with section 16 of this chapter.

19 (b) For purposes of determining the percentage of a
 20 corporation's total sales from the provision of retail energy service
 21 that is attributable to alternative energy projects under section 14
 22 of this chapter, any joint project described in subsection (a)(1) shall
 23 be allocated among the participating corporations according to
 24 each corporation's respective investment in the joint project.

25 Sec. 16. (a) A corporation's board of directors is entitled to
 26 determine how money drawn from the corporation's account
 27 under section 14 of this chapter is used, subject to the following:

- 28 (1) Money drawn from the corporation's account under
 29 section 14 of this chapter must be used for an alternative
 30 energy project that is approved by:

- 31 (A) the office; and
- 32 (B) the corporation's board.

- 33 (2) If the money will be used to develop or invest in an
 34 alternative energy project that involves:

- 35 (A) the construction of a new energy production or
 36 generating facility; or
- 37 (B) the expansion or extension of an existing energy
 38 production or generating facility;

39 the facility to be constructed, expanded, or extended as part
 40 of the alternative energy project must be located in Indiana.

- 41 (3) Money drawn from the corporation's account under
 42 section 14 of this chapter may not be used to purchase

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electricity produced from an alternative energy project, unless the alternative energy project:

(A) is located in Indiana; and

(B) first came online after July 1, 2009.

(4) If the money will be used for a demand side management, energy efficiency, or conservation program, the money must be dedicated to Indiana customers participating in the demand side management, energy efficiency, or conservation program.

(b) Subject to subsection (a), money drawn from the corporation's account under section 14 of this chapter may be used for:

(1) reimbursement to the corporation for money invested by the corporation:

(A) within the thirty-six (36) month period immediately preceding the date funds are applied for by the corporation under section 14 of this chapter; and

(B) for the expansion or extension of an alternative energy project; and

(2) contributions of matching funds to state or federal programs for alternative energy projects.

Sec. 17. (a) The office may adopt rules under IC 4-22-2 to implement this chapter. Any rules adopted by the office under this section must include:

(1) requirements for plans for alternative energy projects submitted by corporations and cooperatively owned power suppliers to the office under this chapter;

(2) standards by which the office evaluates plans described in subdivision (1);

(3) standards or methodologies for determining the percentage of a corporation's total sales from the provision of retail energy service that is attributable to alternative energy projects under section 14 of this chapter;

(4) standards and procedures to ensure that a corporation does not receive money from the fund for an investment in, or a purchase of electricity from, an alternative energy project if money has been received from the fund by another applicant for the same or an equivalent investment or purchase;

(5) procedures for resolving disputes that arise between a corporation and the office concerning:

(A) the accuracy or completeness of an application or any

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documents submitted to the office by a corporation under section 14(c) of this chapter; or

(B) the determination of, or the method used to determine, the percentage of a corporation's total sales from the provision of retail energy service that is attributable to alternative energy projects under section 14 of this chapter; and

(6) any other standards, methodologies, or requirements necessary to implement this chapter.

(b) In adopting rules under this section, the office may consult with the office of energy and defense development.

SECTION 3. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "office" refers to the office of alternative energy incentives established by IC 8-1-13.1-10, as added by this act.

(b) Notwithstanding IC 8-1-13.1-17, as added by this act, the office shall adopt rules to implement IC 8-1-13.1, as added by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Any rules adopted under this SECTION must be adopted not later than May 31, 2009. A rule adopted under this SECTION expires on the earlier of:

(1) the date the rule is adopted by the office under IC 4-22-2-24 through IC 4-22-2-36; or

(2) January 1, 2011.

(c) This SECTION expires January 1, 2011.

SECTION 4. An emergency is declared for this act.

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